



**Order of the Pakistan Telecommunication Authority under section 7 (2) of the
Pakistan Telecommunication (Re-organization) Act, 1996 in Appeal filed by
Worldcall Telecom Limited**

File No. PTA/Finance/LDI/Worldcall Telecom LDI/134/2006/71

Appeals: Appeal No.3/2018 dated: 5th Nov, 2018
Venue of Hearing: PTA HQs, Islamabad
Date of Hearings: 29th November, 2018
2nd May, 2019
6th May, 2019
13 August, 2020

Authority present in hearing

Maj. Gen. Amir Azeem Bajwa (R)	Chairman
Muhammad Naveed	Member (Finance)
Dr. Khawar Siddique Khokhar	Member (Compliance & Enforcement)

The Issue:

"Non-payment of Late Payment Additional Fee for the year ended 31st December, 2011"

1. This order will dispose of Appeal No. 3 of 2018 filed by Worldcall Telecom Limited (the "licensee") on the issue of non-payment of Late payment additional fee. The Licensee, being a Long Distance and International (LDI) operator has filed the instant Appeal under section 7 (2) of the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act") against Enforcement Order (the "Impugned Order") passed by the officers of the Authority under delegated powers of the Authority on 28th July, 2014.
2. Relevant facts of the case are that the Licensee is a LDI license holder and providing licensed services in accordance with terms and condition contained in LDI-05 (10)-2004 dated 3rd August, 2004 (the "license") of license. By virtue of license conditions No(s). 4.1.2(a), 4.1.3, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 6.4.3 read with clause 3.4 and 3.6 and Sub-Regulations 6 and 7 of Regulation 23 of the Pakistan Telecommunication Authority

(Functions & powers) Regulations, 2006 (the “Regulations”), a licensee is under an obligation to submit the Annual Audited Accounts (AAAs) and pay Annual License Fee and Contributions (i.e., R&D and USF) within 120 days of the end of each financial year to which such fees and contributions relate. Based on revenue generated through licensed services, the Annual License Fee is calculated and demand is raised after considering the AAAs. In addition, as per terms and condition of the License, the Licensee is also under an obligation to pay Universal Service Funds (USF) and Research & Development Contribution (R&D). As a consequence of delay in making payments, the Licensee is also obligated to pay Late Payment Additional Fee @2% in the manner as prescribed in the License and the Regulations.

4. As per available record, it is an admitted position that due to delayed payment of outstanding dues on account of Fees and Contributions for the year 2011, legal proceedings under section 23 of the Act were initiated and after providing fair opportunity of hearing to the Licensee, the officers of the Authority under delegated powers passed the Impugned Order. Relevant paras of the Impugned Order are reproduced below:

i. Enforcement order dated 28th July, 2014

- 7 (a) The licensee is hereby directed to pay Late Payment Additional Fee of Rs. 3,132,034/- on account of Annual Regulatory Dues for the year ended 31st December, 2011 within ten (10) days from the date of issuance of order.
- (b) In case of non-compliance of the above order i.e., 7(a) the license shall stand suspended without any further notice and further legal action including but not limited to recovery proceedings under section 30 of the Act shall be initiated against the company i.e., Worldcall Telecom Limited for recovery of all payable dues as arrears of land revenue.

5. The License being aggrieved by the Impugned Order, instead of filing an Appeal under section 7(2) of the Act, preferred to file Writ a Petition before the Honorable Lahore High Court against the Impugned Order as per following detail:

5.1 Writ Petition No. 21735 of 2014 titled World Call Telecom Ltd. Vs. PTA etc.

- i. Against Enforcement Orders dated 28th July, 2014 regarding non-payment of Late Payment Addition Fee of Rs.3,132,034 for the year 2011 and Annual Regulatory Dues of Rs.8,593,502 for the year 2012, the licensee filed a Writ Petition No.21735 of 2014 wherein the licensee made the following prayers:
- a. Impugned Orders be decided illegal and without jurisdiction.
- b. Authority cannot levy any Fee under section 5(2)(p) without corresponding services against it.

- c. Regulation 23(7) of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 and Clause 4.2.3 of the Petitioner's License are *ultra vires* the Pakistan Telecommunication (Re-organization) Act, 1996 and Constitution of the Islamic Republic of Pakistan, 1973.

Any other better relief deemed appropriate by this honorable Court may also be granted

- ii. However, by virtue of court order dated 25th October, 2018, the said petition was dismissed in the following manner:

"The learned counsel for the petitioner submits that he does not wish to press this petition provided the petitioner may be allowed to avail remedy provided under section 7(2) of the Pakistan Telecommunication (Re-organization) Act, 1996. This petition is dismissed as not pressed. However, the petitioner is at liberty to avail the remedy provided under the law."

6. The matter was fixed for hearings on 29th November, 2018, 2nd May, 2019, 6th May, 2019 and 13th August 2020. On 13th August 2020, Mr. Umar Durrani, Director (Regulatory Affairs), Mr. Malik Mushtaq Ahmad Senior Manager (Regulatory Affairs) along with the Licensee's Legal Counsel Mian Abdul Bari Rashid attended the hearing before the Authority and reiterated the stance as stated in the Appeal.

7. It is essential to note that the Pakistan Telecommunication (Re-Organization) Act, 1996 as amended up to date is a special law wherein the limitation for the purposes of filing an Appeal in accordance with Section 7 (2) of the Act, is provided in the Act, itself which is thirty days. For ready reference section 7 (2) of the Act is reproduced below:

"7(2) Any person aggrieved by any decision or order of any officer of the Authority acting under the delegated powers of the Authority may, within thirty days of the receipt of the decision or order, appeal to the Authority in prescribed manner and the Authority shall decide such appeal within thirty days."

The date of the Impugned Order is 28th July 2014 and the instant Appeal has been filed on 05-11-2018, i.e. with a delay of more than four years and three months. The Appeal filed by the Licensee is therefore prima facie blatantly time barred. It is further pertinent to mention that the Licensee was specifically asked to address the issue of limitation during the course of the hearing. The Licensee miserably failed to satisfy the Authority on the point of limitation. Without prejudice to the legal position that no condonation of delay can be granted when the limitation is contained in a special law and by virtue of application of section 29(2) of the Limitation Act, 1908 in such situations, the application of provision of section 5 of the Limitation Act, 1908 is specifically excluded, it is pertinent to mention that the Licensee had admittedly not sought any condonation of delay in filing of the instant Appeal.

8. In the instant matter the Licensee, instead of availing remedy under the section 7(2) of the Act, filed a writ petition against the Impugned Order. Later on, the licensee after a lapse of more than four years and three months filed the instant Appeal. The question before the Authority is to determine whether filing of the writ petition stops limitation period i.e., 30 days as provided for filing appeal under section 7(2) of the Act or otherwise. Filing of writ petition does not extend or modify time lines for filing appeal as provided in the said section. The wrong choice of forum on the part of licensee availing constitutional jurisdiction instead of appellate jurisdiction of the Authority cannot be considered to condone limitation period of filing of appeal. Guidance in this context can be solicited from the Judgment of the Apex Court reported as PLD 2016 SC 872

9. After hearing and careful perusal of record, in addition to and without prejudice to the points noted in paragraphs no. 6 to 8 above, observations of the Authority on merits are as under:

9.1 The Licensee under the License terms and condition is under an obligation to pay outstanding dues. License conditions are binding upon the Licensee. The terms and condition of the License were agreed by the Licensee and accordingly, the License was awarded to the Licensee. In 2004 the License was awarded to the Licensee for a period of twenty (20) years. The License will expire in 2024, the Licensee by now has used and enjoyed all facilities and privileges that it is entitled to pursuant to the License for more than sixteen years, however, the Licensee has consistently on one pretext or another, delayed and/or avoided making payments of outstanding dues on account of fees and contributions

9.2 The Licensee had raised concerns regarding imposition of late payment additional fee. It is clarified that section 5 (2)(a) of the Act provides that the Authority shall grant and renew licenses for any telecommunication system and any telecommunication services on payment of such fee as it may from time to time specify. In addition to section 5 (2)(p) regarding power to levy fee and other charges. Section 21 (4) of the Act further provides that every license under this Act, *inter alia*, contain conditions:

- a. conditions requiring the licensee to adhere to the provisions of this Act and the rules and regulations made thereunder;
- b. conditions requiring the licensee to pay the fees for grant or renewal of the license;
- c.
- d.
- e.
- m. conditions requiring the licenses to contribute to Research and Development Fund and Universal Service Fund; and

n.

9.3 In light of the provisions of the Act, it transpires that the license conditions are consistent with the provision of the Act and the licensee is under obligation to comply with the same and clear its outstanding dues. As far as Late Payment Additional Fee is concerned, it would not be out of context to mention here that the licensee filed a Writ Petition No.2553/2011 before Islamabad High Court, Islamabad wherein the licensee challenged the vires of Regulations and license conditions for demand and imposition of LPAF. For ready reference, prayers are as under: -

- a) *the demands and imposition by the Respondent of late payment charges, Additional Fee and penalties other than penalties provided under Section 23 of the Act of 1996 be declared as void and illegal;*
- b) *the Regulation 23(7) of the PTA (Functions & Powers) Regulations 2006, and Regulation 10(6) of AP Regulations 2005, Regulation 19(4) of the NAAR 2011 and clause 4.2.3 of the Petitioner's LDI license, being ultra vires the Pakistan Telecommunication (Re-organization) Act, 1996 and the Constitution of the Islamic Republic of Pakistan, 1973 and hence being without due authority be declared void ab initio and without legal effect.*

9.4 The Honorable Islamabad High dismissed the Writ Petition No.2553/2011 vide Order dated 6th October, 2016 due to non-prosecution with all CMs and injunctive order. As a consequence, thereof, the licensee's contention with regard to demand and imposition of LPAF is not correct. Accordingly, the licensee is under an obligation to make payments in accordance with terms and conditions of the license and regulations issued by the Authority from time to time. In addition, issue of late payment additional fee has already been decided and adjudicated upon by the Hon'ble Islamabad High Court in various other telecom related matters. The same issue has been discussed in detail in FAO No.22/2015 titled "DV Com Data Vs PTA & Another" (PLD 2017 Islamabad177). For ready reference, relevant paras of the said reported case are reproduced below: -

16. In so far as the nature of obligation *viz-a-viz* the payment of Late Payment Additional Fee is concerned, the same was held to be payable since part of contract between the parties by this Court in case 'Great Bear International Services Pvt. Ltd. Vs. Pakistan Telecommunication Authority (FAO No.33-2012) vide judgment dated 29.05.2015 in the following terms: -

9. *It is settled law that liabilities under an instrument, being in the nature of a contract, cannot be avoided when it has been entered into voluntarily, and out of the free will of the parties thereto. In the instant case, Clause 4.2.3 of the licence as reproduced above, clearly provides that the late payment of fee shall incur additional fee calculation @2% per month on the outstanding part thereof. This being part of the consensual instrument i.e., the licence, is*

binding on the appellant. The argument advanced by the learned counsel for the appellant relating to Regulation 23(3) of the Regulations of 2006 is not relevant in the instant case. The appellant, being bound by obligations accepted pursuant to clause 4.2.3 of the licence, cannot turn around and disown the unequivocal commitment to pay the late payment additional fee @ 2 % per month on the outstanding amount for each month thereof. The payment of the late additional fee is, therefore, not pursuant to Regulation 27(3) of Regulations 2006 but clause 4.2.3 of the license, and consequently the Regulations are not relevant in the instant case. The late payment fee is, therefore, liable to be paid by the appellant.”

17. Similar view was taken by this Court in case titled ‘Telecard Limited Vs. Pakistan Telecommunication Authority’ (FAO No.33-2012) & (FAO No.51-2012) vide judgement dated 24.05.2015 in the following terms: -

“8. The question before this Court is regarding the legality of imposing upon the appellant “Late Payment Additional Fee” at the rate of 2% per month of outstanding dues. Liability to pay “Annual Radio Frequency Spectrum Fee” and “Annual Regulatory Dues” is admitted and the learned counsel at the very outset has stated that the said fees have already paid. The question is, therefore, essentially restricted to the late payment fee. The Act of 1996 has established the respondent authority. Chapter-II relates to licence; Section 21 provides that the issuance of licence under the Act of 1996 shall exclusively vest in the respondent authority. Sub-section (4) of Section 21 specifies as to what terms and conditions may be included in the licence. Sub-section (a) & (b) of Section 21(4) are reproduced as follows.-

“21. Exclusive power of the Authority to grant licenses.-

(4) Every licence granted under this Act may, inter alia, contain-

(a) conditions requiring the licensee to adhere to the provisions of this Act and the rules and regulations made thereunder;

(b) conditions requiring the licensee to pay the fees for grant or renewal of the license;”

9. *From the above it is obvious that the respondent authority is conferred with the power to impose conditions requiring the licensee to pay fee for grant or renewal of licence. Moreover, the respondent authority has the power to include clauses in the licence whereby terms and conditions may be imposed requiring the licensee to adhere to the provision of the Act of 1996 and the Rules made there under. The terms and conditions which may be included in the license are not restricted to the clauses which are enumerated*

in clause 'a' to 'n' of sub Section 4 of Section 21. The expression "inter alia" used in subsection 4 of Section 21 makes it obvious that the legislature intended to keep the realm of terms and conditions, which may be included in a license as expansive i.e. beyond the clauses enumerated in subsection 4 of Section 21. The list provided in subsection 4 of Section 21 is not exhaustive. The terms and conditions of a license are essentially of a contractual nature. At the time of issuance of the license, the appellant obviously was aware of the terms and conditions expressly mentioned therein. The acceptance of the express terms and conditions becomes binding on the parties to a license. The licensee enters into a binding contractual relationship after it accepts the license and enjoys the benefits there under. Clause 4.2.3 relating to payment of late payment additional fee in both the licenses issued to and accepted by the appellant is not in dispute. The appellant is bound by the said clause. The arguments of the learned counsel relating to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006 are misconceived and irrelevant in the instant appeals. The contentions may have been relevant if the respective licenses had not included clause 4.2.3. There is also no force in the argument that the said clause is void. The "late payment additional fee", as held in the impugned orders, is liable to be paid pursuant to clause 4.2.3 of the respective licenses rather than resorting to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006"

18. In case titled as 'Pakistan Telecommunication Company Ltd. Vs. Pakistan Telecommunication Authority (FAO No.17-2015), while elucidating the concept of Late Payment Additional Fee, this Court vide judgment dated 21.09.2015 observed as follows:-

"12. Moreover in clause 6.6 of the license, it is specifically provided that in case of default in payment of fee (included Initial Spectrum Fee) Late Payment Additional Fee (LPAF) at the rate of 2% shall be attracted. In this behalf, the Hon'ble Supreme Court of Pakistan in case titled "Pakcom Limited Versus Federation of Pakistan" reported as (PLD 2011 SC 44) has held that the licensee is bound by the terms of the license and no exception can be taken thereto, subsequently. It was further observed in the referred judgment that where all the terms and conditions of the contract have been accepted by the parties with free consent without coercion or undue influence, fraud or mis-representation the liability under the same cannot be avoided on the ground of mistake of fact or law. Clause 6.6 was all along in the knowledge of the appellant and at this stage no exception thereto can be taken on the premises with the term of Late Payment Additional Fee (LPAF) is in

the form of a penalty. This Court in FAO 32/2012 titled Telecard Ltd. Vs Pakistan Telecommunication Authority held as follows:

“From the above it is obvious that the respondent authority is conferred with the powers to impose conditions requiring the licensee to pay fee for grant or renewal of license. Moreover, the respondent authority has the power to include clauses in the license whereby terms and conditions may be imposed requiring the licensee to adhere to the provisions of the Act of 1996 and the Rules made there under. The terms and conditions which may be included in the license are not restricted to the clauses which are enumerated in clause ‘a’ to ‘n’ of sub Section 4 of Section 21. The expression ‘inter alia’ used in in subsection 4 of Section 21 makes it obvious that the legislature intended to keep the realm of terms and conditions, which may be included in a license as expansive i.e. beyond the clauses enumerated in subsection 4 of Section 21. The list provided in subsection 4 of Section 21 is not exhaustive. The terms and conditions of a license are essentially of a contractual nature. At the time of issuance of the license, the appellant obviously was aware of the terms and conditions expressly mentioned therein. The acceptance of the express terms and conditions becomes binding on the parties to a license. The licensee enters into a binding contractual relationship after it accepts the license and enjoys the benefits there under. Clause 4.2.3 relating to payment of late payment additional fee in both the licenses issued to and accepted by the appellant is not in dispute. The appellant is bound by the said clause. The arguments of the learned counsel relating to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006 are misconceived and irrelevant in the instant appeals. The contentions may have been relevant if the respective licenses had not included clause 4.2.3. There is also no force in the argument that the said clause is void. The “late payment additional fee”, as held in the impugned orders, is liable to be paid pursuant to clause 4.2.3 of the respective licenses rather than restoring to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006.

13. Since the provision of Late Payment Additional Fee (LPAF) is specifically provided in the license, therefore, the appellant is bound to pay the same. The impugned Order is not contrary to facts and law and therefore no exception to the same can be taken”

9.5 As far as the licensee's contention with regard to applicability of Rule 9 of the Pakistan Telecommunication Rules, 2000 is concerned, it is clarified that proceedings in Impugned Order were issued under delegated powers of the Authority in accordance with the procedure laid down in the Pakistan Telecommunication Authority (Functions & Powers)

Regulations, 2006. After recording detailed reasoning on facts, the officers of the Authority passed the Impugned Order. The Authority under section 9 of the Act is empowered to delegate any of its powers, functions or duties as and when it may deem fit, from time to time, to the Chairman, Member, or any of its officers subject to such conditions as it may deem fit to impose. Accordingly, in accordance with Explanation 1 of Regulation 27 of the PTA (Functions and Powers) Regulations, 2006, at PTA Headquarters, show cause notice and any incidental or ancillary proceedings shall be conducted by the Authority or officers of the Authority from Law Division not below the rank of Director, whereas at Zonal / Regional offices, by the concerned Zonal Directors. No concurrent proceedings may be initiated or continued against the same licensee on the same issue at Headquarter and any Zonal office of the Authority. More so, in accordance with Explanation 2 of Regulation 27, *ibid*, the panel of the hearing to be conducted by Law Officer of the Authority shall comprise such officers as may be nominated by Law Division of the Authority keeping in view the nature of the case. Within the applicable legal framework, the Impugned Orders was issued by the Officers under delegated powers of the Authority.

9.6 Most importantly, while examining the record, it has also been observed that despite assurance and undertaking for clearance of outstanding dues in reply to Show Cause Notices, till the date of hearing in this matter, the licensee has not paid amount. For ready reference relevant paras of the impugned order are reproduced below:

9.6.1 Para 4 of the impugned order dated 28th July, 2014 states that the licensee vide letter dated 9th August, 2012 replied to the SCN and submitted that the licensee is in process of arranging FDI USD 35 million by HBL Bahrain and Omantel. Complete detail of transaction along with other relevant information has already been submitted to the Authority vide letter dated 8th June, 2012. As soon as the licensee receives this FDI, the Annual Regulatory Dues for the year 2011 will be paid. In addition during hearing held on 16th July, 2014, Mr. Kamil Khan Director (GR) who attended hearing categorically stated that FDI as referred in reply has been arranged and the company is in a process to release outstanding dues payable to PTA. He further stated that tentatively outstanding dues will be paid by 30th September, 2014.

9.6.2 Till date, the licensee has not paid Late payment additional fee for 2011

9.7 The conduct of the licensee with regard to its obligations clearly shows that the licensee, willfully is not paying outstanding dues. The said inaction on part of the licensee is grave and persistent.

10. Order:

10.1 In light of the factual and legal position as stated above, the Authority in view of the contents of paragraphs no. 6 to 8 above, is of the considered opinion that the instant Appeal

is blatantly time barred and is dismissed on that basis. However, the Authority in the interest of fairness examined and discussed the entire case of the Licensee on merits, but, the Authority could not find any cogent reason and justification to interfere in the Impugned order which is well reasoned and is in accordance with law. Therefore, the Appeal being completely without any substance is also dismissed on merits.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 4th day of December, 2020 and comprises of (12) pages only.